

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

AMERICAN CIVIL LIBERTIES UNION OF
MASSACHUSETTS and LAWYERS FOR
CIVIL RIGHTS,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
HOMELAND SECURITY, IMMIGRATION
AND CUSTOMS ENFORCEMENT,

Defendants.

C.A. No. 19-12564-MBB

DEFENDANTS' STATUS REPORT

Defendants U.S. Immigration and Customs Enforcement ("ICE") and United States Department of Homeland Security's Office of Intelligence and Analysis (I&A) (collectively, "Defendants"), submit this status report.

I. ICE

The Court ordered that, as to the second Freedom of Information Act request, the "Warrant Service Officers" request that is at issue in this action, that the government produce the requested documents that it deems policy documents by July 31, 2020. Order of July 4, 2020. During the month of July, ICE reviewed a total of 508 pages of ICE records for this production; some of these pages were in addition to the documents identified as policy documents. Of these pages, ICE determined that 273 were non-responsive in nature and four pages required further coordination with another agency/component. The remaining 231 pages were produced to Plaintiff by overnight delivery on July 31, 2020. The produced documents contain redactions

pursuant to Exemption 5, deliberative process, attorney work product and attorney/client privileged material; Exemption 6, personnel files and similar files involving an unwarranted invasion of privacy; Exemption 7(C), records compiled for law enforcement purposes reasonably expected to constitute an unwarranted invasion of personal privacy; and Exemption 7(E), records compiled for law enforcement purposes the release of which would disclose techniques and/or procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, as well as techniques and procedures at issue not well known to the public.

ICE will process and produce 500 pages a month of documents responsive to the WSO requests until production is completed, estimated to occur in April 2021. Because most of the document requests seek sensitive law enforcement documents, processing of the requested documents is a laborious process involving a number of levels of review and release authorizations. As previously noted, ICE has previously produced 612 documents in response to number 2 of the Warrant Service Officer request, which requested “All Memoranda of Agreement and other contracts executed by ICE in connection with the WSO program, including with any state or local government entity.”

As to documents responsive to the first FOIA request, the “Gang Profiling Request,” with the exception of item 10 of this Request, most of the requests are very broad in scope; and Defendant ICE continues to object to them and to request that Plaintiffs narrow the requests. ICE has repeatedly asked Plaintiff to clarify what records it is, in fact, seeking concerning the Gang Profiling FOIA request. On June 9, 2020, ICE submitted a proposed narrowing of the Gang Profiling FOIA request to Plaintiffs in efforts to start a constructive discussion with

Plaintiffs to identify with more specificity the records Plaintiffs had in mind. In response, Plaintiff states that it will not engage in narrowing discussions at all until ICE collects all of many thousands of the documents requested by the Gang Profiling request and inform Plaintiff of the numbers of pages responsive to those requests. That response is inadequate; ICE suggests that if Plaintiff has reservations about ICE's narrowing suggestions, that Plaintiff provide its own suggestions for narrowing its broad requests to particular documents that it is looking for, so that ICE can search for specific documents and not conduct a massive, labor intensive broad search, a search that, in its view, would be not only wasteful and expensive but far beyond what Plaintiff specifically wants to find out about ICE operations.

For example, as previously noted, Plaintiff ACLU's Gang Profiling requests lack information sufficient to identify record custodians or limitations on which parties ICE should task to conduct searches. Some of the requests are not limited by particular time periods, evidently requesting documents from the date of origin of the agency.

ICE requests that Plaintiff commit to the narrowing that ICE has suggested or be amenable to developing narrowed searches with ICE. If the Parties are able discuss and come to agreement on narrowed search parameters, ICE's search will be more focused, which will radically reduce the number of pages collected during the search and expedite the production process.

II. DHS INTELLIGENCE AND ANALYSIS (I&A)

The DHS Office of Intelligence and Analysis does not have documents in response to Plaintiffs' second, WSO, FOIA request. With respect to the first, Gang Profiling Request, I&A has completed its search for responsive documents, finding an additional 89 pages of documents.

Of those, 37 pages were referred to ICE as ICE documents, 27 pages were duplicates, and 25 pages were sent to Plaintiffs by cover letter dated July 26, 2020. These documents contain redactions pursuant to Exemption 3, "information specifically exempted from disclosure by statute;" Exemption 6, personnel or medical files and similar files; Exemption 7(E), law enforcement information that would disclose techniques and procedures for law enforcement investigation or prosecution or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.

Respectfully Submitted,

ANDREW E. LELLING
United States Attorney

By: /s/ Anita Johnson
ANITA JOHNSON
Assistant United States Attorney
United States Attorney's Office
John Joseph Moakley U.S. Courthouse
One Courthouse Way - Suite 9200
Boston, MA 02210
(617) 748-3266
Anita.Johnson@usdoj.gov

CERTIFICATE OF SERVICE

I certify that this document will be filed through the electronic filing system of the Court, which system will serve counsel for Plaintiffs electronically, on this fourth day of August 2020.

/s/ Anita Johnson
Assistant United States Attorney